IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEALS NO. 140 AND 142 OF 2002.

1. Shailendra V. Naik (deceased)

1a. Mrs. Priti Shailesh Manjrekar,
and her husband:

1b. Shri Shailesh Janardhan Manjrekar,
both residing at A-10, Shanti Camp,
Nahur Road, Mulund (West), Mumbai.

2. Ratnakar Naik.

3. Vaman Gopal Naik (expired)
represented by LRs.

3a. Smt. Vimlabai V. Naik.

3b. Shri Anil Vaman Naik.

3c. Gopal Vaman Naik,
all residing at Surchebhat,
Kumbarjua, Goa.

4. Shankar G. Naik (deceased)

4a. Smt. Kamlabai S. Naik.

4b. Shri Yeshwant S. Naik.

4c. Shri Dilip S. Naik.
all residing at Janki Niwas,
Surchembhat, Kumbarjua, Goa.

4d. Mrs. Milan S. Naik.

4e. Mr. Voikunth S. Naik,
both residing at Mapusa, Goa.

5. Nishigandha Narendra Naik,
resident of Janki Niwas,
Surchembhat, Kumbarjua, Goa. .... Appellants.

VERSUS

Special Land Acquisition Officer,
(K.R.C.) Amey Guest House,
Dhavorlim Road, P.O. Navelim,
Salcete, Goa. .... Respondent.

Shri V. Menezes, Advocate for the Appellants.

Shri E. Afonso, Advocate for the Respondent.

CORAM: P.V. HARDAS &
N.A. BRITTO, JJ.

DATE: 23RD AUGUST, 2004.

ORAL JUDGMENT: **(PER BRITTO, J.)**

These appeals are filed against the Judgments/Awards dated 2.6.2001 of the learned Addl. District Judge, Panaji in LAC Nos.203/96 and 204/96.

2. Since the parties are common and so also the facts, both the appeals are being disposed off by this common judgment.

3. Briefly stated, the Government by virtue of Notification issued under S.4(1) of the Land Acquisition Act, 1894 and published on Gazette dated 13.6.91 acquired an area of about 486728 sq.m. for the purpose of construction of a new B.G. line between Roha and Mangalore in the villages of Ela and Carambolim in Tiswadi Taluka. In LAC No.203/96 9825 sq.m. were acquired from survey No.65/1 belonging to the Applicants. In LAC No.204/96 7175 sq.m. were acquired from survey No.105 (part) belonging to the Applicants.

4. The LAO, by his Award dated 3.1.94 awarded a

sum of Rs.18/- per sq.m. for the land of survey No.65/1 and Rs.30/- per sq.m. for the land of survey No.105 (part).

5. The appellants/applicants (applicants, for short) sought references to be made under S.18 of the Land Acquisition Act and claimed compensation at the rate of Rs.250/- per sq.m.

6. The applicants in support of their case examined one of the applicants, namely Shailendra Naik. applicants also examined Architect Shri Bhobe as their expert. The applicants also produced a sale deed dated 30.10.91 and in support of the same examined AW.3 Kashinath Mashelkar. The sale deed in support of which Shri Mashelkar was examined was dated 30.10.91.

7. The learned Addl. District Judge did not accept the evidence of AW.2 Shri Bhobe as the learned Addl. District Judge found that he had prepared and submitted a report which was three years later in point of time than the relevant date of notification, the said date being 13.6.91. No grievance has been made by the applicants regarding the rejection of the evidence and the report submitted by AW.2 Shri Bhobe. In our view the evidence of AW.2 Shri Bhobe also ought to have been rejected because Shri Bhobe had not assigned any

good reasons as to how he had arrived at Rs.175/- per sq.m. as the market value of the acquired land.

8. The learned Addl. District Judge also found that the sale deed dated 30.10.91 could not be compared with the acquired land. Moreover, the said sale deed was a post notification sale deed and the applicants had not led any evidence to show that there was no appreciation of the value of the said land during the period of issue of notification under S.4(1) of the Act and the date of the said sale deed. It is well settled, as stated by the Supreme Court in the case of **Karan Singh and others v. Union of India** [(1997) 8 S.C.C., 186], that the burden is on the applicants to show that the price of the land had remained static and there was no upward rise in the price of the land during the period of issue of notification under Section 4(1) of the Act and the date of transaction of sale. Obviously the said sale deed dated 30.10.91 could not have been used as a guide for the purpose of fixing the market value of the acquired land.

9. Having realised this situation, Shri Menezes, learned counsel for the applicants, sought an amendment to the grounds of appeal which was granted by this Court by a separate order. After the said amendment, Shri Menezes has submitted that the applicant (AW.1)

had tendered two sale deeds, one dated 29.11.1982 and the other dated 19.11.1984 in LAC No.203/96 and three sale deeds dated 29.11.82, 19.11.84 and 15.5.84 in LAC No.204/96 which were marked 'X' for identification by the learned Addl. District Judge, thereby refusing to accept the said sale deeds in evidence and not exhibiting them though the same were legally tendered. Shri Menezes therefore has submitted that there has been a denial of opportunity to the applicants to have the said sale deeds read in evidence by them being only marked 'X" subject to identification. Shri Menezes has therefore submitted that the appeals be allowed and the respective cases remanded to the learned Addl. District Judge so as to give the applicants an opportunity to lead substantive evidence on comparison between the said sale deeds and the acquired land.

10. We are not inclined to accept the submissions made on behalf of the applicants by Shri Menezes, the learned counsel.

11. Section 77 of the Indian Evidence Act 1872 deals with proof of documents by production of certified copies and provides that such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies. Section 51-A of the

Land Acquisition Act, 1894 deals with acceptance of certified copy as evidence and further provides that in any proceeding under this Act, a certified copy of a document registered under Registration Act, 1908 (16 of 1908) including a copy given under S.57 of that Act, may be accepted as evidence of the transaction recorded in such document.

12. Admittedly the applicants filed a list of documents on or about 19.3.99 in terms of the provisions of O.13, Rule 1 C.P.C. then in force. However, it is important to note that the applicants even at that stage did not produce the certified copies of any of the sale deeds. Subsequently the evidence of AW.1 Shailendra was recorded in LAC No.204/96 on 10.9.99 and again on 15.2.2000. The evidence of AW.1 Shailendra was recorded in LAC No.203/96 on 15.2.2000. At the time of recording the evidence of AW.1 Shailendra what the applicants did was to tender a xerox copy of the said 2/3 sale deeds and the applicants chose to retain with themselves the certified copies of the said sale deeds brought by them. There is nothing in the evidence recorded of AW.1 Shailendra that any request was made by the applicants to the learned Addl. District Judge to admit the certified copy and mark the same as exhibits. On the contrary the evidence, in the manner it has been

recorded, shows as already stated that the applicants remained happy by tendering xerox copies and retaining with them certified copies of the sale deeds. Hence the applicants cannot now be heard to say that the learned Addl. District Judge refused to accept the certified copies of the sale deeds tendered by them. However the matter does not end there. The evidence of AW.1 Shailendra was recorded at the time when law required that one of the parties to a sale deed ought to be examined. The applicants by applications dated 18.7.2000 brought to the notice of the learned Addl. District Judge about their list of documents filed on 19.3.99 and stated that the applicants were not in a position to secure the attendance of the executants as parties to the said sale deeds were not traceable. It is therefore obvious that the applicants at that stage did not at all wish to make use of the said sale deeds because according to them the sale deeds could have been proved only by examining one or the other parties to the said sale deeds. The applicants in the said application dated 18.7.2000 further represented to the Court that they were desirous of relying on the sale deed dated 30.10.1991 which the applicants had secured. The applicants therefore sought leave of the Court to produce the said sale deed dated 30.10.91 which was accordingly produced. The application dated 18.7.2000 clearly shows the intention of the applicants was that

they did not wish to rely at all on any of the sale deeds which they had mentioned in their list of documents dated 19.3.1999 and of which they had produced xerox copies subsequently and for that reason they had thereafter chosen to rely only on the sale deed dated 30.10.91. In such a situation the applicants cannot now be heard to say that they were deprived of any opportunity by the learned Addl. District Judge from producing the certified copies of the said sale deeds as mentioned by them in their list dated 19.3.99.

13. Shri Menezes has placed reliance on the case of **L.A.O. & Mandal Revenue Officer v. V. Narasaiah** [(2001) 3 S.C.C. 530]. In this case what has been held is that S.51-A of the Land Acquisition Act 1894, enables the Court to admit the copy of the document in evidence.

14. Reliance has also been placed by Shri Menezes on the case of **State of Maharashtra v. Zakir Ali s/o Parvarish Ali and another** (2004 (1) Mh.L.J. 565). In this case a Division Bench of this Court has reiterated the principle that in terms of S.51-A of the Land Acquisition Act, 1894 a certified copy of a document registered under the Registration Act, 1908 including a copy given under section 57 of that Act, may be

accepted as evidence of the transaction recorded in such a document. These observations were made relying upon the case of **State of Haryana v. Ram Singh** [(2001) 6 S.C.C., 254]. In this case the Hon'ble Supreme Court observed thus:-

> " The submission of the learned counsel for the claimants that Exhibits R-2 and R-3 were in any event inadmissible because they were merely photostat copies of sale deeds was not a ground of appeal raised by the claimants in any of the appeals preferred by them from the decision of the District Judge. The original records are not before us and it is not possible to state with any certainty whether the original certified copies of Exhibits R-2 and R-3 had or had not been produced by the State in any of the proceedings under Section 18. Although the reference sunder Section 18 had been decided on the basis of Exhibits R-2 and R-3, in the absence of any challenge on this score before the High Court by the claimants, the High Court did not address itself to this aspect of the matter at all. Therefore, the matter will have to be remanded to the High Court to take a decision on the market value of the acquired land taking into consideration Exhibits R-2 and R-3 unless the claimants are permitted by the High Court to establish their

inadmissibility. "

15. The aforesaid observations do not take the case of the applicants any further. As already indicated hereinabove it is the applicants who chose not to produce the certified copies of any of the sale deeds either at the stage of production of documents or at the stage of recording the evidence of the applicants or at any time thereafter and being so, the applicants now cannot be heard to complain that it is the learned Addl. District Judge who deprived them an opportunity to lead substantive evidence by marking the copies produced by them as 'X' (or for that matter X1 and X2) subject to identification.

16. We find that this is not a fit case for remand to enable the applicants to have a further opportunity to lead evidence in relation to the said sale deeds.

17. As a result of the above discussion, we find that the learned Addl. District Judge was fully justified in dismissing the reference made by the applicants. We dismiss these appeals, with no order as to costs.

P.V. HARDAS, J.

sl. **N.A. BRITTO, J.**